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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

Case No. 767

In the Matter of the
UNAUTHORIZED PRACTICE OF LAW

In re J. HARVEY CROW, *Appellant*

On Appeal From the Supreme Court of Ohio

JURISDICTIONAL STATEMENT

J. HARVEY CROW
St. Paris, Ohio
In Propria Persona

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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JURISDICTIONAL STATEMENT

The appellant appeals from the judgment of the Supreme Court of Ohio which is the trial court in this action sentencing this appellant to three maximum sentences allowed by law of ten days in jail and $500.00 fine for criminal contempt of court, holding that the appellant violated two separate and distinct orders of the court.

There was a complete failure on the part of the trial court to comply with chapter 2705 of the Revised Code of Ohio, and there was absolutely no evidence offered or submitted to show a violation of any order of the Supreme Court, a clear violation of the Ohio and the United States Constitution. The appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINIONS BELOW

The trial court, to wit the Supreme Court of Ohio, rendered no opinion. Application for rehearing was denied without opinion. The Court entered an entry on November 19, 1963, which is set forth in the appendix, pages 1a and 2a.

JURISDICTION

Appellant, J. Harvey Crow, was adjudged guilty of two separate and distinct criminal contempt of court on November 19, 1963 by the trial court, the Supreme Court of Ohio. A timely application for rehearing was denied December 4, 1963, and a second notice of appeal was filed January 13, 1964. Execution of sentence was stayed by the Honorable Judge Potter Stewart, Associate Justice of the United States Supreme Court on December 9, 1963.

Jurisdiction of this Court rests on 28 U. S. C., 1257 (2) or 1257 (3).

The convictions of criminal contempt violates the due process clause, because there was no evidence that the appellant disobeyed any order of the Supreme Court of Ohio.

If the appeal should be considered as having been improvidently taken, the Court is requested to consider such appeal as petition for certiorari, under title 28 U. S. C., 2103.

CASES BELIEVED TO SUSTAIN JURISDICTION

The following decisions sustain the jurisdiction of the Supreme Court of the United States, to review the judgment on appeal in this case.

Edward R. Fields, et al., Appellant, v. *City of Fairfield*, October Term, 1963, Case No. 30

Aaron D. Frank v. *State of Maryland*, 359 U.S. 360, (1959)

Ohio Ex. Rel. Eaton v. *Price*, Case No. 30, October, 1959

Wolf v. *Colorado*, 338 U.S. 25

STATUTES INVOLVED

Ohio R. C. 2705.01 Summary punishment for contempt.

"A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice."

Ohio R. C. 2705.02 Acts in contempt of court.

"A person guilty of any of the following acts may be punished as for a contempt:

(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or an officer . . . ."

Ohio R. C. 2705.03 Hearing.

"In cases under section 2705.02 of the Revised Code, a charge in writing shall be filed with the clerk of the court, an entry thereof made upon the journal, and an opportunity given to the accused to be heard, by himself or counsel . . . ."

Ohio R. C. 2705.05 Trial.

"Upon the day fixed for the trial in a contempt proceeding the court shall investigate the charge, and hear

any answer or testimony which the accused makes or offers.

The court shall then determine whether the accused is guilty of the contempt charge. If it is found that he is guilty, he may be fined not more than five hundred dollars or imprisoned not more than ten days, or both."

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution

Amendment 5:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment 6:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

Amendment 14:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall

any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Ohio Constitution

Article 1, Section 1

"All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life, land, liberty, acquiring, possessing and protecting property, and seeking and obtaining happiness and safety."

Article 1, Section 10

". . . . In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf . . . ."

Article 1, Section 16

"All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

QUESTIONS PRESENTED

1. Did the Supreme Court of Ohio deprive the appellant of due process of law as guaranteed to him under the 5th, 6th Amendments and enforced on the States under the 14th Amendment to the United States Constitution by finding the Respondent-Appellant guilty of criminal contempt of court on November 19, 1963, for willful and continued failure to comply with orders issued to him on May 6 and May 22, 1963, without

(1) The filing of any charges or

(2) giving Respondent-Appellant any time to prepare a defense and

(3) refusing to appoint counsel to assist the respondent appellant.

(4) presenting no evidence against respondent-appellant.

(5) refusing a trial or hearing on the orders of May 6th and May 22nd, 1963, all which is in violation of the statutes of Ohio.

2. Did the Supreme Court of Ohio deprive the Respondent-Appellant of due process of law as guaranteed to him under the 5th, 6th, and 7th Amendments and enforced on the States under the 14th Amendment to the United States Constitution, by finding the Respondent-Appellant guilty of criminal contempt of court on an application by the Bar Committee under specification "A" without.

(1) hearing any evidence

(2) assigning the matter for hearing or trial

(3) attempting to compel the respondent to testify against himself

(4) refusing to give respondent assistance of counsel

(5) making a finding of fact without any evidence

(6) attempting to establish a fact through failure of respondent to answer under oath.

3. Did the Supreme Court of Ohio deprive the Respondent-Appellant of due process of law as provided in the 5th and 6th Amendments and enforced in the States under the 14th Amendment of the Constitution by failure to make its order of October 21, 1959, definite and certain especially after the respondent has set forth in his Answer of January 21, 1959.

Said order is indefinite and uncertain, and the Ohio Supreme Court had never previously determined what is or what is not the practice of law.

5. Did the Supreme Court of Ohio deprive the appellant of due process of law as guaranteed to him under the

5th and 6th Amendments and enforced on States under the 14th Amendment of the United States Constitution, by finding said appellant guilty of criminal contempt of court, without providing a hearing of the charges or an opportunity to the Respondent-Appellant to offer evidence in support of the defenses which if proven would be a complete defense to any charges?

7. Did the Supreme Court of Ohio deprive the Respondent-Appellant in this criminal contempt proceeding of due process of law as guaranteed to him under the 5th and 6th Amendments of the United States Constitution and enforced on States under the 14th Amendment of the United States Constitution, in finding said appellant violated the order of said court and raising or lifting a suspension without a showing of any further violations of such order, in a proceeding in which the Respondent-Appellant was not afforded the following:

a. full knowledge of the charges against him;

b. reasonable time to prepare a defense;

c. benefit of compulsory process;

d. assistance of counsel;

e. presumption of innocence;

f. protection against being compelled to testify against himself.

STATEMENT OF FACT

Prosecution for criminal contempt of the Supreme Court was brought by the chairman of the unauthorized practice of law committee of the Ohio State Bar Association. An application was filed in the Supreme Court praying for an order to J. Harvey Crow to show cause why he should not be punished for practicing law in violation of a disbarment order. Said application contained 8 items, a-h inclusive, which read as follows:

a. The performance of legal services for a corporation, including the conduct of litigation, ostensibly as Cor-

porate Secretary, a position procured by J. Harvey Crow for the sole purpose of affording a shield for the unauthorized practice of law.

b. The performance of legal services for individuals under color of a power of attorney.

c. Holding himself out as an attorney at law for the purpose of representing individuals for whom he employs other counsel to make court room appearances.

d. The conduct of litigation for persons under color of an assignment of an interest in property or a cause of action, such assignment being colorable only and signing of the same of another attorney thereto and obtained solely as a shield for the unauthorized practice of law.

e. Performance of legal services upon incorporation of a company under color of participation as a principal.

f. The performance of legal services under the pretense of acting as an "investigator."

g. The preparation of pleadings in court cases for signature and filing by individuals ostensibly acting on their own behalf.

h. The preparation of instruments in court cases, the signing of the name of another attorney thereto and then filing such instruments with court functionaries.

This application was filed May 3, 1963. On May 6, 1963, without any hearing or without notice to the appellant, the court entered an order to show cause. (App. p. 3a) Immediately upon service of the application and the order to show cause, the appellant filed a motion requesting the Supreme Court of Ohio to extend the time to June 15, 1963, for the purpose of securing legal counsel to represent the appellant before this Court and to file an answer to the application. Having heard nothing by May 25, 1963

in response to said motion, the appellant left for Chicago, Washington D. C., and New York on business.

On May 22, 1963, an order was made granting an extension to May 29, 1963, in regard to specification "A" and June 15, 1963, to other specifications, as set out in Appendix, pp. 4a, 5a. Said order was left at his place of residence on May 27, 1963. He received a copy of said order while in Washington, D. C. sometime in June, as is shown in the record of the proceedings on November 19, 1963.

The appellant not appearing on May 29, 1963, in the Supreme Court of Ohio, a capias was issued, and on November 14, 1963, the appellant was detained by the sheriff of Champaign County. The Supreme Court set bond at $10,000.00 for appearance on November 19, 1963. This was the first time that the appellant was personally notified to be present in court, and he appeared. When the appellant returned to Ohio, he contacted a judge of the Supreme Court of Ohio. Said judge advised the appellant to employ an attorney, have him contact the court and arrange a date for appellant's appearance before the court. The appellant was explicitly following such instruction when arrested by the sheriff of Champaign County, Ohio.

The attorney, representing the committee, advised the court he was prepared to offer evidence on the application and supplement to application which was filed June 24, 1963, after a motion by the appellant to make the application definite and certain regarding paragraphs a-h inclusive. Supplement to application was in compliance with the motion to make the application definite and certain.

The court speaking through Chief Justice Taft said,

> "I think the Court would perhaps like to consider whether we shouldn't have this evidence presented to a referee rather than all seven of us sitting here listening to it in open court."

The appellant said,

> "That I think, in all fairness to the Court and to myself, that all of these matters should be considered;

that I should be given the opportunity to present all evidence that is possible in regard to any of these situations, to a Special Master, and that this Court should appoint a Special Master for the purpose of hearing all the facts regarding all the situations in these regards, in regards to any charges against me.

I am sure that if the Court understood the situation as I understand the facts, there would be no criticism on my part whatsoever."

The appellant, both by written motion and orally, requested the court to appoint counsel for him.

The appellant was in the process of showing the interpretation of the former order of this court regarding what is the practice of law, as interpreted by the attorney for the unauthorized practice of law committee, in a case filed in 1961, in the Court of Common Pleas in Madison County 21476 and in a case filed in the Court of Appeals in the second judicial district in Ohio. If the appellant had been permitted he could have shown that in that case the attorney for this committee said,

1. "Certain corporation, firms and individuals have been and are now engaged in the practice of law without having been qualified to do so as attorneys and counselors of law and without having been admitted to the practice of law by the Supreme Court of Ohio."

2. "No person, firm or corporation has a right to practice as an attorney or counselor at law in any manner or in any respect or to render legal services of any nature or to commence, conduct, or defend any action or proceeding in which he, they, or it is or are not a party unless said person has been admitted to the practice of law by order of the Supreme Court of Ohio in accordance with the statutes of the State of Ohio and the rules of the Supreme Court."

The appellant was not allowed to proceed further to advise the court as to the committee's own interpretations, but was interrupted by Chief Justice Taft who said,

"Mr. Crow, I think that these relate to the portions of the petition other than the Specification "A," don't they?

Mr. Crow: No, this relates directly to Specification "A."

Chief Justice Taft: Well, I'll tell you, I think we have heard what we want to hear here. I don't think— I assume you said the important stuff, and I'd like to proceed with what I have to say."

Sentence was pronounced without further comment.

There are two separate and distinct findings of criminal contempt in the entry of November 19, 1963.

1. Willful and continued failure to comply with orders issued to him May 6 and May 22, 1963. The Ohio R.C., chapter 2705, provides for contempt of court. No hearing was afforded or provided the appellant under said chapter as provided therein.

2. Practicing law as stated in said show cause order of May 6, 1963, as appears from the record filed in this court in the case of *Eidmiller* v. *Kerns* on appeal from the Court of Appeals of Union County, Ohio.

In the first place a check of the clerk's office does not show a record of any such case having been filed in the Supreme Court of Ohio. See Affidavit, Appendix, p. 6a. In the second place there are no facts in the application as set out in the order to show cause served on the appellant May 6, 1963. There is absolutely no evidence that the appellant, J. Harvey Crow, filed notice of appeal, assignments of error and brief on behalf of the Ohio Little Five Hundred Raceway Inc., nor any admissions by the appellant.

The appellant contended that he was entitled to have the Court appoint counsel in this criminal contempt proceeding.

The appellant contended that it was the duty of the committee to produce evidence that the Appellant did any act which constituted the practice of law.

There is absolutely no evidence in the record to show any violation of any court order.

The record shows a complete lack of compliance with the Ohio statutes.

The court conducted no hearing and the appellant was not afforded full knowledge of the charges against him, reasonable time to prepare a defense and benefit of compulsory process.

HOW THE FEDERAL QUESTIONS ARE PRESENTED

Since the Supreme Court of Ohio was the trial court, the appellant vigorously contended that the procedure and judgment by the trial court violated his constitutional rights. The appellant contended that the prosecution for the criminal contempt of court, judgment of the trial court, and his incarceration was unreasonable and unlawful and in violation of his constitutional rights under the 5th, and 6th Amendments of the Constitution of the United States and enforced on the States under the 14th Amendment of the United States of America, and was repugnant to each of the amendments and hence invalid.

The trial court refused to give the appellant assistance of counsel for his defense as requested by the appellant in a written application made to the court, and an oral application made to court, which is in violation of the 6th Amendment to the Constitution of the United States and enforced on the States under the 14th Amendment.

Chief Justice Taft said,

> "Now, last May, we issued an order for you to appear before us and to answer one of the specifications of a petition that was filed here which was the

only one that appeared sufficiently definite for us to consider at that time."

In the Application for Rehearing the appellant clearly sets out the violation of his constitutional rights by a trial court in all three judgments rendered against him.

From that judgment[1] this appeal is brought here.

QUESTIONS ARE SUBSTANTIAL

There are two separate, distinct convictions and sentencing under the order of November 19, 1963. We will discuss the question involved in each one of these items separately

1. The willful and continued failure to comply with orders issued to the appellant May 6 and 22, 1963.

The order to show cause issued on Monday, May 6, 1963, as shown in Appendix, pp. 3a and 4a, was issued three days after the application was filed on Friday, May 3, 1963, which contains specification A. This order to show cause orders the appellant by written answer under oath, to file by May 13, 1963, in the trial court a statement whether or not he filed.

a. notice of appeal

b. assignments of error and brief on behalf of the Ohio Little Five Hundred Raceway Inc.

At the request of the appellant to extend time to June 15, 1963 this was postponed until May 29, 1963, and the rest of the application was postponed until June 15, 1963, as shown by Appendix, pp. 4a and 5a, to enable appellant to obtain counsel.

There was a citation also issued by the court for the appellant to appear in person on May 29, 1963, at 10 AM

[1] Appendix, pp. 1a and 2a

to answer specification "A." Neither of these instruments were delivered to the appellant in person but were left at his usual place of residence, St. Paris, Ohio, and at a time when the appellant was outside of the state on business.

In the court order of November 19, 1963, Appendix, pp. 1a and 2a there is nothing in the seven items of the court's finding that shows a willful and continued failure to comply with the orders of this court issued to him on May 6 and 22, 1963. The Ohio R.C., 2705.01, provides that a person may be summarily punished for contempt of court, if his behavior is in the presence of or near the court to obstruct the administration of justice. Ohio R.C., 2705.02, provides that a person guilty of disobedience of an order of a court may be punished for contempt of court. The trial court in its order of November 19, 1963, said that the appellant was guilty of failure to comply with the *orders* of this court.

Therefore said appellant was entitled to the benefits of Ohio R.C., 2705.03, which provides:

a. charge shall be filed with the clerk,

b. an entry made upon the journal,

c. an opportunity given to the accused to be heard by himself or counsel.

The record in this case shows that none of these requirements were fulfilled.

Ohio R.C., 2705.05, provides:

a. fix a day for a trial,

b. investigate the charges,

c. hear any answer or testimony which the accused makes or offers.

None of these provisions were complied with by the court. As a matter of fact the appellant did not understand that

the court had under consideration any contempt of any failure to comply with orders issued on May 6 and 22, 1963, until he was sentenced. Although by reading of the record Chief Justice Taft did say among other things,

"or the third matter your failure to appear last May."

In the application for rehearing the appellant set out that the failure to comply with the R.C., 2705.02-03-05, was a violation of the due process clause.

In the case in the matter of *Lands*, 146 O.S., 589-1944, the Supreme Court of Ohio in the opinion written by the Honorable Charles Bell indicated the legislature has a right to regulate contempt proceedings. See 11 O. Jur. 2D page 132:

> "The statutory provisions in respect to contempt of court merely regulate, rather than create, the power of the court to punish for contempt. The mode of procedure may be prescribed in the statute, in the matter of filing of charges and requiring a hearing thereon, and while courts do not derive their power to punish for contempt from any statute, they must conform to statutes which do not abridge their power but merely regulate its exercise.."

In *Garner* v. *Louisiana*, 368 U.S. 157, 163 (1961), was stated as follows:

> "The Court held that a conviction in a State court must be set aside under the Due Process Clause if it is 'totally devoid of evidentiary support.' Accord, Thompson v. City of Louisville, 362 U.S. 199 (1960). The rationale of Garner and Thompson is not whether the evidence in the record is insufficient to support the conviction, but whether there is any evidence at all tending to prove one or more of the essential elements of the offense. 'In addition,' as the Court stated in Garner, the concern is not 'whether the evidence proves the commission of some other crime, for it is as much a denial of due process to send an accused to prison following conviction for a charge that was

never made as it is to convict him upon a charge for which there is no evidence to support that conviction' (id. at 164).

The appellant requested the court to appoint a special master, as the court indicated it would do previously, to hear all the matters and give this appellant the opportunity to present all the evidence, so the court would understand the true facts. Then the court would have no criticism of any acts done by the appellant.

Surely the appellant did not need to do anything in regard to the show cause order of May 6, 1963, because in the order itself the court must have contemplated the appellant would not file a written answer, positively verified under oath; because they say that if not so verified will be taken as true as evidencing violation of the former order of this court.

In the order May 6, 1963, the trial court was attempting to eliminate the proof required to convict either beyond a reasonable doubt or by a prepondance of the evidence. The order attempted to require the appellant to testify against himself by filing a written answer under oath. The appellant is presumed to be innocent. His guilt must be proved beyond a reasonable doubt, and he can not be compelled to testify against himself. (See *Gompers* v. *Bucks Stove Co.*, 221 U.S. 418, 444, and *Michealson* v. *United States*, 266 U.S. 42, 66.)

The order of May 22, 1963, was delivered to the appellant's home on May 27, 1963, just two days prior to the hearing date which in itself is unreasonable, but also at a time when the appellant was outside the state. The appellant did receive these notices in the mail after the hearing date and did contact a judge of the Supreme Court of Ohio upon his return to Ohio and was advised by a Judge of the Supreme Court of Ohio to employ an attorney and have said attorney employed contact the court and make a date for an appearance before the court. The appellant

followed these instructions explicitly. This information is contained in an affidavit attached to the application for rehearing and was known by the court on November 19, 1963.

The United States Supreme Court is the only place to which this appellant can appeal to protect his property and his freedom against the infringement of his constitutional rights.

There were no charges filed in regards to the orders of May 6 and May 22, 1963. There was no compliance with the Ohio Statutes. There was no evidence offered, yet there was a finding made by the Court against the appellant for criminal contempt.

Is this a violation of the due process clause? We believe it is, and we trust this court will rule on this important question.

2. Practicing law as stated in said show cause order of May 6, 1963, as appears from the record filed in this court in the case of *Eidmiller v. Kerns* on appeal from the Court of Appeals of Union County.

According to the clerk's statement there is no such case filed in the Supreme Court of Ohio. Record shows that Judge Taft said,

> "pleadings were filed in this court indicating Mr. Crow was practicing law."

The record shows that Judge Taft said,

> "to answer one of the specifications of a petition that was filed here which was the only one that appeared sufficiently definite for us to consider at that time."

Looking at specification "A" certainly would not indicate it being definite and certain, nor indicate the facts found in the order of May 6, 1963.

The record also shows Judge Taft said, "the matter relative to this case where you filed the case against Judge

Kern and the other judges which the notice of appeal was filed in this court."

The appellant never filed any case against Judge Kerns or the other judges, and it was so stated in the application for rehearing. The fact that there were false impressions in the minds of the judge is clearly shown, and just as clearly it indicates the necessity for a hearing to prove evidence to convict a person of criminal contempt.

The order to show cause issued May 6, 1963, says in part.

> "and it further appearing to this Court that on October 25, 1962, the said J. Harvey Crow, purporting to act as Secretary of an Ohio corporation, The Ohio Little 500 Raceway, Inc., filed in the Common Pleas Court of Union County, Ohio, a Notice of Appeal, and subsequently in the same case filed in the Court of Appeals of the Third Appellate Judicial District of Ohio, Union County, assignments of error and a brief on behalf of said corporate appellant."

The trial court neglected to say how such information was obtained. No such fact was alleged in the application, no evidence was presented when the appellant was present or personally notified to be present. It must have been done between May 3 and May 6, 1963, since the order was issued May 6, 1963, and the application was not filed until May 3, 1963.

There is absolutely no evidence in the record of this cause that the appellant did anything that could constitute practice of law either as an individual or as a secretary of a corporation. The appellant does not believe that proof of a fact can be made in any court by the court saying, "unless you deny the statement it will be taken as true." That is in direct conflict with both the Ohio and United States Constitutions as set forth in this jurisdictional statement.

There is absolutely no evidence for the court finding item 6, as shown in the entry of November 19, 1963, that the appellant did practice law in violation of the disbarment order.[2]

Convictions of criminal contempt for violating the disbarment order violate the 5th and 6th Amendments of the Constitution of the United States and enforced on the States under the due process clause of the 14th Amendment, because there was no evidence that the appellant disobeyed any such order.

The governing principle is plain: "Just as 'Conviction upon a charge not made would be sheer denial of due process,' so it is a violation of due process to convict and punish a man without evidence of his guilt." *Thompson* v. *Louisville*, 362 U.S. 199, 206.[3] See, also, *Garner* v. *Louisiana*, 368 U.S. 157; *Taylor* v. *Louisiana*, 370 U.S. 154. To be sure, "the state's ultimate conclusion on guilt is examined from the due process standpoint in the light of facts undisputed by the state," *Gallegos* v. *Nebraska* 342 U.S. 55, 61, and the constitutional claim "does not turn on a question of sufficiency of evidence." *Garner* v. *Louisiana*, *supra*, at 163. The inquiry is, rather, whether "the convictions * * * are so totally devoid of evidentiary support as to render them unconstitutional under the Due Process

[2] Appendix, pp. 1a, 2a.

[3] The Court quoted from *Dejonge* v. *Oregon*, 299 U.S. 353, 362. See also *Cole* v. *Arkansas*, 333 U.S. 196, 201 ("It is as much a violation of due process to send an accused to prison following conviction of a charge on which he is never tried as it would be to convict him upon a charge that was never made"), and, *United States ex rel. Vajtauer* v. *Commissioner of Immigration*, 273 U.S. 103, 106 ("Deportation * * * on charges unsupported by any evidence is a denial of due process * * * ").

Clause of the Fourteenth Amendment.'"[4] Ibid. Cf. *Konigsberg* v. *State Bar*, 353 U.S. 252; *Schware* v. *Board of Bar Examiners*, 353 U.S. 232. Judged by this standard, it seems to us plain that the present convictions cannot stand.[5]

The courts' findings are not a substitute for evidence,[6]

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[4] The principle of the *Thompson* and *Garner* cases has been applied by Alabama Courts. In *Mauldin* v. *State*, 28 Ala. App. 30, 177 So. 309 (1937), the defendant was tried and convicted for embezzlement of eleven hogs. On appeal, the Court of Appeals of Alabama noted (28 Ala. App. at 31): "* * * we have the anomalous situation of a defendant being convicted of a crime charged against him without any evidence to sustain it." The defendant's conviction was reversed and the court said (28 Ala. App. at 32): "To permit this conviction to stand on the record as it appears before us would be to deny this defendant the right of due process of law, guaranteed to him by the Constitution of the United States (Amendment 14) and by the Constitution of this State (section 6)."

[5] We believe that it is clear that the *Thompson* rule is equally applicable to criminal contempt proceedings as to ordinary criminal cases. In both situations, a man's liberty is at stake. Except for the right to trial by jury, a defendant in a criminal contempt proceeding receives the full protection of due process. *Green* v. *United States*, 356 U.S. 165. Thus, he is presumed to be innocent, his guilt must be proved beyond a reasonable doubt, and he cannot be compelled to testify against himself. *Gompers* v. *Bucks Stove and Range Co.*, 221 U.S. 418, 444; *Michaelson* v. *United States*, 266 U.S. 42, 56. He receives notice of and has a reasonable opportunity to meet the charges against him, and has the right to counsel and the right to present his own witnesses and or to cross-examine others. *Cooke* v. *United States*, 267 U.S. 517, 537. There is no reason why he should be deprived of the constitutional rule recognized in *Thompson*.

[6] Cf. Mr. Justice Frankfurter, concurring in *Garner* v. *Louisiana*, 368 U.S. 157-175: "A judge's private knowledge, or even 'knowledge by notoriety,' to use Dean Wigmore's phrase, IX Evidence, 2569 (Third ed. 1940), not presented as part of the prosecution's case capable of being met by a defendant, is not an adequate basis, as a matter of due process, to establish an essential element of what is punished as crime. Thompson v. City of Louisville, 362 U.S. 199."

and as already indicated there simply is no evidence in the record to support the Court's conclusion.

In the Record, page 23, Chief Justice Taft said,

> "Well, I'll tell you, I think we have heard what we want to hear here. I don't think—I assume you said the important stuff, and I'd like to proceed with what I have to say."

If evidence had been taken by the court or special master appointed, the court would not have to "*assume*" anything. They could make the finding upon the evidence produced.

The proceedings in the trial court clearly show that the appellant's Constitutional Rights were violated as previously determined by this court.

> "In the case of Truax v. Corrigan, 257 U.S. 312 at 332, Chief Justice Taft defined 'due process' as guaranteed by the fourteenth Amendment as follows:
>
> 'The due process clause requires that every man shall have the protection of his day in Court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society.'"

3. The order of the Supreme Court for the appellant to cease the practice of law is not definite and certain and is subject to different interpretations and therefore not enforceable until definitely defined by the court that made the order.

In the appellant's answer filed January 21, 1959, in this action the appellant said,

> "I have appeared in A State Court of record in behalf of myself or as an officer of a corporation, in cases where I have an interest, as permitted to do under the

Constitution of Ohio, the Statutes of Ohio and the Constitution of the United States of America."

The trial court, the Supreme Court of Ohio, in their entry of October 21, 1959, did not say that appearing in a state court of record for myself or as an officer of a corporation was a violation of the disbarment order.

The question was presented to the trial court in 1959, and they failed to say that an officer of a corporation could not appear in court on its behalf to protect its property. The fact that the answer as filed and no comment or criticism was made by the court would indicate that they were in accord with the statement set forth in appellant's answer. This clearly shows that an officer of a corporation can appear in court to protect his property. This was the interpretation placed on the authority of an officer of a corporation by the attorney for the committee that filed this application, and by the Judges of the Second Judicial District of Ohio and by the trial judge in Union and Madison County Court.

The appellant was advising the court that the attorney for the unauthorized practice of law committee when interrupted (as shown in the Statement of Fact) that in Madison County in case No. 21476 in 1961, and the Court of Appeals of said district held that a secretary of a company had a right to appear before the court and present a claim for services due a corporation; and if such claim was disallowed to appeal such disallowance to the Court of Appeals. It was held at that time not to be a violation of a disbarment order.

Phillip K. Folk, the attorney for the unauthorized law committee in this action, did file an application as set forth in the Statement of Fact.

The trial judge in the Madison County Case and the trial judge of the Union County Ohio Court held that a secre-

tary of a corporation could present a claim for a corporation when its property was involved and that was not any violation of any disbarment order.

Assuming, but not admitting, because there is absolutely no proof of the fact in the order to show cause filed May 6, 1963, that the notice of appeal, assignment of error and brief were filed by J. Harvey Crow as secretary and assuming but not admitting that the third appellate district held that could not be done by the secretary of a corporation, this certainly would not be contemptuous since this was directly opposite to the opinion filed by Phillip K. Folk, attorney for the unauthorized law committee and an opposite holding to the Second District Court of Appeals and contrary to the holding of the County Judge of Union County.

The actions by these various lawyers and judges clearly show a difference of opinion as to what is and what is not the practice of law. The order of the court in October 21, 1959, said,

> "he is ordered to cease forthwith the practice of law and the holding out of himself, in any manner and in any court, as an attorney at law."

There is no charge that the appellant held himself out in any manner, in any court as an attorney at law. The Supreme Court of Ohio has never determined whether a secretary of a corporation could appear on behalf of the corporation to protect its property.

Therefore the order not to practice law in and of itself is not definite and certain. We believe the Supreme Court of Ohio has a right to interpret its own orders, but until it does so we have a right to rely upon the interpretation of the attorney for the committee who filed the charges to determine what is and what is not the practice of law. If the interpretation of the committee is followed, and the

Supreme Court finally places different interpretation and says that what the committee said was not the practice of law is the practice of law, then the order is not definite and certain and is subject to different interpretations. Only after the court that made the order interprets its own orders, and then there is a violation of such order, could there be a finding of criminal contempt against a violator of the order.

Surely the appellant had a right to rely on the interpretation of the committee who filed the charges, so he would have a guidepost to follow.

An order that is subject to different interpretations is not definite and certain. An order violation which will support contempt must be clear and definite. See *in Re Miller and Harbaugh*, 54 Fed. 2nd 612. A conviction under an order that is not definite and certain is contrary to and in violation of the due process clause of the Constitution of the United States and its Amendments, there to and enforced on the States through the 14th Amendment to the said Constitution.

The questions submitted here are substantial, are of great public importance both to the citizens of the State of Ohio and to this appellant. We believe that these questions merit plenary consideration by this court.

Respectfully submitted,

J. Harvey Crow
St. Paris, Ohio
In Propria Persona

APPENDIX

THE SUPREME COURT OF THE STATE OF OHIO

Of The Term of January 1963
To wit: November 19, 1963

No. 35825

Entry

STATE OF OHIO } ss
CITY OF COLUMBUS }

IN THE MATTER OF THE UNAUTHORIZED
PRACTICE OF LAW
IN RE: J. HARVEY CROW

This cause came on for further hearing on the portion of the application filed herein on May 3, 1963, relating to specification "A" thereof, on the order of May 6, 1963, issued pursuant to said application to respondent to show cause, on the citation issued May 22, 1963, ordering respondent to appear on May 29, 1963, and on evidence heard in open court, and the court finds:

1. Said application of May 3, 1963, and said order of May 6, 1963, were personally served upon respondent on May 6, 1963.

2. Respondent filed a motion on May 13, 1963, for an extension to June 15, 1963, for the filing of an answer to said show cause order of May 6, 1963.

3. Residence service of said citation of May 22, 1963, was made on May 27, 1963, upon respondent by leaving a copy thereof with his wife at his residence.

4. Respondent admits that he received a copy of said citation while in Washington where he went in June 1963.

5. Respondent has done nothing to comply with the show cause order of May 6, 1963, and made no attempt to appear before this court prior to November 13, 1963.

6. Respondent did practice law as stated in said show cause order of May 6, 1963.

7. Although given an opportunity to do so, respondent has given no reason for failing to comply with the orders of this court on May 6, 1963, and no reason for his ignoring the citation of this court of May 22, 1963.

It is therefore ORDERED, ADJUDGED and DECREED that respondent be fined $500 and imprisoned in the Franklin County Jail for ten days for contempt of this court demonstrated by his willful and continued failure to comply with the orders of this court issued to him on May 6, 1963, and May 22, 1963; that respondent be fined $500 and imprisoned in Franklin County Jail for ten days for contempt of this court in practicing law as appears from the record filed in this court in the case of Eidmiller v. Kerns on appeal from the Court of Appeals of Union County; that the suspension of imposition of sentence upon respondent, which was ordered by this court on October 21, 1959, be raised and that respondent be fined $500 and imprisoned in the Franklin County Jail for ten days for the contempt of this court adjudged in that order of October 21, 1959; and that the foregoing jail sentences be served consecutively.

It is further ordered that the respondent be placed in the custody of the Sheriff of Franklin County and be committed to the Franklin County Jail for a period of 30 days and for such additional period of time thereafter until the costs and fines assessed herein are paid, or until otherwise discharged by law.

It is further ordered that this proceeding with respect to all other matters be continued until further order of this court.

TAFT
Chief Justice

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF THE UNAUTHORIZED PRACTICE OF LAW

IN RE: J. HARVEY CROW

No. 35825

Order to Show Cause

The Court having received and considered the Application filed in this proceeding May 3, 1963, by the members of the Unauthorized Practice of Law Committee of the Ohio State Bar Association on behalf of the members of the Bar of this Court, and it appearing that said Application, if the facts stated therein are true, presents a situation seriously threatening the administration of justice in Ohio and consequent serious damage to the public, the Court finds that an Order should be issued forthwith to J. Harvey Crow, respondent in this proceeding, to show cause why he should not be punished for further contempt of this Court and, if his conduct appears to have been in further violation of the rules and orders of this Court with respect to the practice of law and with respect to the conduct specifically of the said J. Harvey Crow, such further Orders should be issued as may be necessary for the protection of the public;

And it further appearing to this Court that on October 25, 1962, the said J. Harvey Crow, purporting to act as Secretary of an Ohio corporation, The Ohio Little 500 Raceway, Inc., filed in the Common Pleas Court of Union County, Ohio, a Notice of Appeal, and subsequently in the same case filed in the Court of Appeals of the Third Appellate Judicial District of Ohio, Union County, Assignments of Error, and a brief on behalf of said corporate appellant, as appears from an order made by the Court of Appeals of the Third Appellate Judicial District, on the 23rd day of February, 1963, in Case Number 298 (Union County);

It is ordered that the said J. Harvey Crow by written answer, positively verified under oath by the said J. Harvey Crow, filed in this Court on or before May 13, 1963, state whether or not he filed the Notice of Appeal, Assignments of Error and brief on behalf of The Ohio Little 500 Raceway, Inc.; and that any of the facts with reference to the said appeal which are recited above and are not specifically denied by written answer positively verified shall be taken as true and as evidencing violation of the former order of this Court finding the said J. Harvey Crow in contempt and suspending imposition of punishment therefore, and said suspension of sentence will thereupon be revoked and said J. Harvey Crow immediately punished for said former contempt;

And this proceeding is with respect to all other matters mentioned in the Application filed herein under date of May 3, 1963, continued until further order of this Court.

KINGSLEY TAFT
Chief Justice

THE STATE OF OHIO, CITY OF COLUMBUS

1963 TERM

To wit: Wednesday, May 22, 1963

IN THE MATTER OF THE UNAUTHORIZED PRACTICE OF LAW

IN RE: J. HARVEY CROW

No. 35825

Entry

This matter came on for the Court's consideration on the motion of J. Harvey Crow for an extension to June 15, 1963 for the filing of an answer to the show cause served on him on May 6, 1963.

On consideration whereof, it is ordered that an extension to May 29, 1963 be granted for answering specification A of the application and that as to the other specifications J. Harvey Crow be granted to June 15, 1963 as requested.

C. William O'Neil

BEFORE THE SUPREME COURT OF OHIO

Citation

To the Deputy Marshal:
(Copy for Service)

You are commanded to notify J. Harvey Crow, 363 N. High Street, Columbus, Ohio or St. Paris, Ohio, that he has been cited to appear in person before The Supreme Court of Ohio, State House Annex, Columbus on Wednesday, May 29, 1963 at 10:00 o'clock A.M. then and there to answer to Specification A of an Application filed in this Court on May 3, 1963 which application together with an Order to Show Cause was served on J. Harvey Crow on May 6, 1963.

You shall make due return of service forthwith.

C. William O'Neil

Marshal's Return

Affidavit

State of Ohio
Franklin County, ss.:

J. Harvey Crow, being first duly cautioned and sworn, according to law, deposes and says that in December 1963, he appeared at the Clerk's Office of the Supreme Court of Ohio, and requested a Deputy Clerk to give the filing date

of the case of Eidmiller vs. Kerns, filed in the Supreme Court in Ohio.

Deputy McConnell and affiant checked the docket and no such case was shown as ever docketed in the Supreme Court of Ohio. Deputy McConnell advised this affiant that to his knowledge, such a case was never filed in said Court.

Further affiant saith not.

J. Harvey Crow

Sworn to before me an subscribed in my presence this 13th day of January, A.D. 1964

Guy R. Martin

Guy R. Martin

Seal *Notary Public—State of Ohio*